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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,426	01/11/2006	Juan, Maria Cruz-Sagredo Garcia	CRUZ-SAGREDO GARCIA, J-1	8862
25889	7590	01/30/2009	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			MUROMOTO JR, ROBERT H	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			01/30/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,426

Applicant(s)CRUZ-SAGREDO GARCIA, JUAN,
MARIA**Examiner**

BOBBY H. MUROMOTO JR

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|--|---|

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-20 are rejected under 35 U.S.C. 102(b) as being anticipated by
Brickman US patent 2,660406.

Claim 1 recites "Sclerophyllic mesh", which has been referenced as a synonym for "barbed wire" by applicant in the instant specification.

Brickman clearly discloses a barbed wire and therefore "Sclerophyllic mesh" as defined by applicant.

Brickman clearly discloses the term 'electrowelded' as this is a product by process limitation. The Brickman mesh recites 'welded' wire. The MPEP has established that once the examiner has shown an essentially identical product that a 102 or 103 rejection is proper and that the burden has shifted to applicant to prove that the recited process steps result in a different structure than that of the prior art.

Figures clearly show barbs (sharp points) on the mesh as claimed. Brickman discloses an embodiment welding the barbs to the welded wires as in claims.

Figure 5, 6, and 7 show an embodiment where the barbs are joined to the wire intersections 38, extend obliquely and perpendicularly (since no point of reference is given to determine the angles), curved and straight barbs in figure 7, fence mesh shapes other than square in figure 10, barbs from one side in figure 7 and from both sides in figure 3, as claimed.

Further figures 2, 3, 5, 6 and 7 all clearly show welded cross wires (longitudinal wires 10, 16; intersecting with transverse wires (4, 14) that at the intersections have barbs (12, 20, 22, 24) as claimed.

Also the disclosure clearly states, "barbed wire is made as follows: welded wire fabric 2, of the desired weight having the spacing of the cross wires the same 55 as the desired spacing of the barbs, is provided. The cross wires are cut on a bias as shown in Figure 1 and the cut wires are, bent to form a substantially V-shaped barb 12. Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in Figures 2 and 3. In making a barbed wire mat, such as shown in Figure 4, substantially the same method is followed. Part of the longitudinal wires 14 are cut on a bias and bent into barbs 18 which extend from the mat in one direction. The completed mat consists of a plurality of longitudinal wires 14 and a plurality of cross wires or pickets 16 to which barbs 18 are fastened. This mat may be used in fields and roads to puncture pneumatic tires of enemy planes or land vehicles. The barbs may assume various shapes. As shown in Figure 5, the barb 20 is bent on a sharp radius around the cross wire 16. The barb 22 of Figure 6 is bent around the wire 16 on a larger radius and extends upwardly at a sharper angle than the barb 20."

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Figures 2, 3, 5, 6, and 7 all clearly show various claimed barb arrangements.

Figure 2 and 3 clearly show barbs 12 extending in two different directions, i.e. two sides of the mesh as claimed.

Figures 8 and 9 clearly show rectangular mesh, which is not a square as newly claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brickman in view of White US 5577712.

Although Brickman has clearly disclosed all limitations of the claims above, Brickman does not teach the use of a different material for the barbs.

However, White teaches, "Barbed wire has been commonly used for many years to fence in land and to act as a deterrent against trespass not only by humans but by animals as well. Barbed wire fencing also has a preferred use to contain certain types of farm animals, such as cows, horses, sheep, etc., on a certain piece of property...

Although the barbs are preferably metal, the barbs may also be formed from a non-metallic material provided that they can be formed with sufficiently sharp ends to provide the necessary deterrent effect against animals pressing against the barbed wire fence."

Therefore it would have been obvious to one of ordinary skill in the art of barbed wire fencing to use barbs made from any metallic or non-metallic material provided that they can be formed with sufficiently sharp ends to provide the necessary deterrent effect of the barbed wire fence.

Response to Arguments

Applicant's arguments filed 1/15/2009 have been fully considered but they are not persuasive.

Applicant has not overcome the burden of evidence with regard to product-by-process limitation "electrowelded" resulting in a materially different product than a "welded" mesh.

Arguments regarding barbs not being at 'intersections' is clearly in error. In addition to rejection above to further illustrate that barbs are at welded intersections, the examiner cites directly from the patent:

"The cross wires are cut on a bias as shown at 10 in figure 1 and the cut wires are bent to form a substantially V-shaped barb. **Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in Figures 2 and 3.** In making a barbed wire mat, such as shown in Figure 4, substantially the same method is followed. **Part of the longitudinal wires 14 are cut on a bias and bent into barbs 18** which extend from the mat in one direction. **The completed mat consists of a plurality of longitudinal wires 14 and a plurality of cross wires or pickets 16 to which barbs 18 are fastened.**"

So if the wires are welded into fabric and then the cross wires are cut to form the barb, then the barbs are without a doubt formed at the intersections as claimed.

Subsequently, the patent states, "Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in figures 2 and 3."

Since no point of reference is claimed for determining the "two sides of the mesh", the oppositely oriented barbs do extend to the claimed "two sides of the mesh".

Since these are the arguments presented and newly amended claims are also disclosed by the prior reference the rejection remains and is considered to be proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY H. MUROMOTO JR whose telephone number is (571)272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert H Muromoto, Jr./
Primary Examiner, Art Unit 3765